

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:11-cr-20109

v.

HONORABLE STEPHEN J. MURPHY, III

D-1, TIMOTHY RICE,

Defendant.

**OPINION AND ORDER DENYING DEFENDANT'S MOTION
FOR RETROACTIVE APPLICATION OF SENTENCING GUIDELINES [45]**

Defendant Timothy Rice pleaded guilty to possession with intent to distribute Oxycodone, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) (Count 3); possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c) and (c)(1)(A)(i) (Count 7); and being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) and (a)(2) (Count 8). ECF 36. The Presentence Investigation Report calculated Rice's total offense level at 25 and placed him in criminal history category II. See ECF 42.

At sentencing, however, the Court found that Rice's total offense level was 23. The Sentencing Guidelines provided for 51–63 months imprisonment on Counts 3 and 8 plus 60 consecutive months on Count 7. Rice's overall resulting guideline range was 111–123 months. The Court granted Rice a downward variance of 15 months and sentenced him to 96 months imprisonment. Rice now moves the Court to reduce his sentence under 18 U.S.C. § 3582 and Amendment 782 to the drug quantity Sentencing Guidelines.

Amendment 782 retroactively lowered the sentencing guidelines for drug offenses by two levels. To determine whether a retroactively lowered sentencing guideline applies, § 3582(c)(2) "establishes a two-step inquiry." *Dillon v. United States*, 560 U.S. 817, 825

(2010). First, a court must determine "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission" in U.S.S.G. § 1B1.10. *Id.* at 826. Second, a court must "consider whether the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a)." *Id.*

"At step one, § 3582(c)(2) requires the court to follow the Commission's instructions in § 1B1.10 to determine the prisoner's eligibility for a sentence modification and the extent of the reduction authorized." *Id.* at 827. If Amendment 782 "had been in effect at the time [Rice] was sentenced," then his total offense level would have been reduced by two levels, from 23 to 21. § 1B1.10(b)(1). Rice's amended guidelines range would have been 41–51 months for Counts 3 and 8 consecutive to 60 months for Count 7. Accordingly, application of Amendment 782 would lower Rice's guideline range from 111–123 months to 101–111 months imprisonment.

Under § 1B1.10(b)(2)(A), the Court may not reduce a defendant's sentence "to a term that is less than the minimum of the amended guideline range" except for substantial assistance, which does not apply here. *United States v. Jackson*, 751 F.3d 707, 711 (6th Cir. 2014) (quoting § 1B1.10(b)(2)(A)). Rice received a sentence of 96 months imprisonment, which is below his amended guideline range of 101–111 months. The Court therefore lacks authority under § 3582(c)(2) to reduce his sentence any further.

WHEREFORE, it is hereby **ORDERED** that Defendant's Motion for Retroactive Application of Sentencing Guidelines [45] is **DENIED**.

SO ORDERED.

Dated: May 9, 2017

s/Stephen J. Murphy, III

STEPHEN J. MURPHY, III
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 9, 2017, by electronic and/or ordinary mail.

s/David P. Parker

Case Manager